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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,863	03/04/2002	Carlos Saiz	SAIZ-1	4295

7590 08/26/2003

BROWDY and NEIMARK  
SUITE 300  
624 Ninth Street N.W.  
WASHINGTON, DC 20001-5303

EXAMINER
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COLE, ELIZABETH M

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 08/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/086,863	Applicant(s) SAIZ, CARLOS	
	Examiner Elizabeth M Cole	Art Unit 1771	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10 and 11 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
     If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☒ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
     a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____.  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other:  |

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1. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 8, the recitation of a polymer material "such as polyvinyl chloride" renders the claim indefinite because, although a per se test is not applied, in this instance, it is not clear what other materials would be encompassed by the claim, i.e., what other polymeric materials would be similar enough to polyvinyl chloride to be used, or if the claim is intended to be limited to polyvinyl chloride only.

2. Claims 10-11 provide for the use of a textile, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 10-11 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

3. Claim 9 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend on another multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claim 8 has not been further treated on the merits.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-8, 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2,293,583 to Preston in view of EP 940,277 to Malpas and U.S. Patent NO. 5,973,28 to Cheng. Preston discloses a tarpaulin comprising a woven net having a plurality of thermoplastic fibers and a plurality of metallic fibers wherein the metallic fibers are connected in series along the edge of the textile. See page 1, final paragraph, page 2, third paragraph, and page 3, first paragraph. Preston differs from the claimed invention because Preston does not teach the particularly claimed spacing of the warp and weft cables. However, since Preston incorporates the cables throughout the woven fabric in order to both provide an electrical circuit as well as to prevent cutting of the tarp, it would have been obvious to one of ordinary skill in the art to have optimized the spacing of the threads through the process of routine experimentation in order to produce a fabric having the optimal strength and conductivity. Preston further differs from the claimed invention because Preston does not teach coating the fibers and metal wires and does not teach that the coating should be different colors. Malpas teaches that protective fabrics comprising polymeric and metal fibers may be coated with polyvinyl chloride in order to protect the fibers. The coating may be such that it penetrates the interstices between the warp and weft fibers. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have applied a protective coating of a polyvinyl chloride to the fabric of Preston. One of ordinary skill in the art would have been motivated to apply the polyvinyl chloride coating to the fabric of Preston in order to protect the fibers of the

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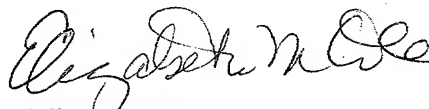
Preston material. See page 2, line 55 – page 3, line 8, as well as the abstract of Malpas. With regard to employing different colors, Cheng teaches that different wires may be color coded in order to distinguish the different electrical wires from each other. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed different colors to coat the metal fibers and the polymeric fiber as taught by Cheng. One of ordinary skill in the art would have been motivated to employ different color coatings because the different color coatings would distinguish the metal fibers from the polymeric fibers, thus enabling the protective tarpaulin of Preston to be easily electrified.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (703) 308-0037. The examiner may be reached between 6:30 AM and 5:00 PM Monday through Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (703) 308-2414.

Inquiries of a general nature may be directed to the Group Receptionist whose telephone number is (703) 308-0661.

The fax number for official faxes is (703) 872-9310. The fax number for official after final faxes is (703) 872-9311. The fax number for unofficial faxes is (703) 305-5436.



Elizabeth M. Cole  
Primary Examiner  
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e.m.c

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